

Gross receipts are not subject to Retailers' Occupation Tax liability from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. See, 86 Ill. Admin. Code 130.605. (This is a GIL.)

December 31, 1998

Dear Mr. Xxxxxx:

This letter is in response to your letter received by our Office on August 25, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY sold an aircraft which was delivered out of State. Since the sale was an out of state delivery no Illinois sales tax was collected. In the agreement when the aircraft was sold the aircraft in the future was to be brought back to COMPANY's facility for additional maintenance and additional equipment to be installed. Is the additional maintenance and equipment also Illinois Tax exempt since it was part of the agreement of the aircraft sale. COMPANY is in the business of aircraft sales and maintenance which is located in the State of Illinois.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The Use Tax Act, 35 ILCS 105/1 et seq., imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. As such, Illinois retailers are liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers at the time of sale.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if the sale is at retail. However, Retailers' Occupation Tax liability does not apply to the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. See subsection (b) of

the enclosed copy of 86 Ill. Adm. Code 130.605. If a sales agreement requires the tangible personal property being sold to be returned to this State after delivery outside of this State, this exemption would not apply.

Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State, transports or sends the property out of this State for use outside the State or for use in the conduct of interstate commerce. See part (2) of subsection (a) of Section 130.605.

Generally, if an agreement for sale requires the seller to install additional items or equipment at a later date and the charges for those additional items or equipment are included in the selling price of the original sale, no further Retailers' Occupation Tax liability is incurred on the installation of the additional items or equipment. If the additional items or equipment were not included in the selling price of the original sale, Retailers' Occupation Tax liability would be incurred on the subsequent selling price of those additional items or equipment.

Please refer to 86 Ill. Adm. Code Sec. 130.1935(b), enclosed, for information regarding maintenance agreements. The taxability of maintenance agreements depends upon if charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax.

If maintenance agreements are sold separately from tangible personal property, sales of the agreements are not taxable transactions. However, when maintenance services or parts are provided under the maintenance agreements, the service or repair companies will be acting as service providers under provisions of the Service Occupation Tax Act. The Service Occupation Tax Act provides that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See the enclosed copy of 86 Ill. Adm. Code 140.301(b)(3).

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Encl.